Office-Supreme Court, U.S.
FILED
MAY 27 1963
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 1075

OCTOBER TERM, 1962.

TENNESSEAN NEWSPAPERS, INC.,
Petitioner,

vs.

ROBERT G. VENN,
Respondent.

REPLY TO PETITION FOR WRIT OF CERTIORARI

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INDEX

No Question Presented Justifying Writ 1

No Constitutional Issue Involved 2

No Issue of Privilege Available As to Counts Two and Four Here Involved, Because Not Pleaded 2

No Issue As to Actionability Per Se—Foreclosure by Concurrent Finding 3

Some of the Findings of the Trial Judge 4

No Witness Introduced by Petitioner 7

Counts Two and Four Do Not Relate to FCC or Senate Crime Committee Records or Reports 8

No Plea of Guaranty of Free Speech 9

Publications Are Libelous Per Se, and Damages 10

The Decisions Cited in the Petition 13

Conclusion 17

Table of Cases

Anderson v. *Abbott*, 321 U.S 349 (1944), r'hg denied 321 U.S. 804 3

Anderson v. *Featherly*, (1915 Tenn. C.C.A.) 6 Higgins 94, 99 12

Bank v. *Bowdre*, (1893) 92 Tenn. 723, 726 11

Barr v. *Mateo et al.*, 360 U.S. 564, 79 S. Ct. 1335 13

Brownfield v. *Landon*, (D.C.) 307 F.2d 389 (Cert. Den.) 17

Commercial Publishing Co. v. *Smith*, 149 Fed. Rep. 704 14

Dale v. *Temple Co.*, 208 S.W.2d 344, 351, 186 Tenn. 69, 84 8

Doughty v. *Grills*, 260 S.W.2d 379, 37 Tenn. App. 63, 90 8

duPont Engineering Co. v. *Nashville Banner Pub. Co.*, M.D. Tenn. 1926) 13 F.2d 186 12

Fisher v. *Insurance Co.*, 124 Tenn. 450, 473-483 8

Goodyear Tire & Rubber Co. v. *Ray-O-Vac Company*, 321 U.S. 275 (1944) 3

Hackey v. *Metropolitan Life Ins. Co.*, (1943) 26 Tenn. App. 564, 174 S.W.2d 575 12

Hogan v. *New York Times Co.*, (2nd Cir.) 313 F.2d 354, 356 16, 17

I. C. R. R. Co. v. *Rouw & Co.*, 25 Tenn. App. 475, 159 S.W.2d 839, 849 8

In re Murchison et al., 349 U.S. 133, 75 S. Ct. 623 15

Nat. Life & Acci. Ins. Co. v. *Eddings*, 188 Tenn. 512, 522 8

Patterson v. *Alabama*, 294 U.S. 600 16

Peck v. *Tribune Company*, 214 U.S. 185, 190 (1909) 3, 12-13, 14

Rice v. *Sioux City Cemetery*, 349 U.S. 70, 75 S. Ct. 614 15

Sweeney v. *Newspaper Print Corp.*, 177 Tenn. at p. 200 14

Tabor v. *Mutual Life Ins. Co.*, (4 C.C.A.) 13 F.2d 765, 770 8

Wallingford v. *Zenith Radio Corp.*, (7th Cir.) 310 F.2d 693 16

Washington Post Co. v. *Chaloner*, 250 U.S. 290 (1919) 3, 13

Williams v. *Georgia*, 349 U.S. 375, 75 S. Ct. 814 16

Williams Manufacturing Company v. *United Shoe Machinery Corporation*, 316 U.S. 394 (1942) 3

TEXT AND RULES

Restatement, Torts, Sec. 559 (e) (19) 13

Rule 16(2) (a) of the Sixth Circuit Court of Appeals 1

Supreme Court Rule 23(d) 2

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No Question Presented Justifying Writ

Pursuant to Rule 16(2) (a) of the Sixth Circuit Court of Appeals, Petitioner stated three questions involved in its brief in that Court, one of which is totally abandoned, the other two being, as stated by Petitioner in its brief in the Court of Appeals:

> "1. Are the publications complained of in Count Two (July 15, 1954) and Count Four (July 17, 1954) of the Complaint libelous *per se*?
>
> The District Judge answered this question 'Yes'.
>
> Appellant contends that this question should be answered 'No'.

2. Are the publications complained of in Count Two and Count Four privileged (either absolute or qualified)?

The District Judge answered this question 'No'.

Appellant contends this question should be answered 'Yes'."

No Constitutional Issue Involved

The petition presents no constitutional question to this Court. Supreme Court Rule 23(d). The statement of issues in the Court of Appeals, *supra*, presented no constitutional question. The answer of petitioner in the District Court pleaded no constitutional question (Appellant's Appendix 16a-29a, in Court of Appeals), nor did the agreed pre-trial order (Appellant's Appendix 31a, in Court of Appeals). Nowhere in any Court has Petitioner pleaded any provision of any constitution.

No Issue of Privilege Available As to Counts Two and Four Here Involved, Because Not Pleaded

There was no plea of privilege as to Count Four (Appellant's Appendix 23a-24a, in Court of Appeals).

As to Count Two petitioner stated in its answer:

> "Defendant denies that said article imputed that plaintiff was conducting his 'Talkathon' in the interest of Al Polizzi, 'the Cleveland mobster', such description being an *exact quotation* from the privileged Kefauver Crime Commission report hereinbefore referred to *insofar as its characterization of Al Polizzi* was concerned." (Appellant's Appendix 22a-23a, in Court of Appeals—Emphasis supplied).

Petitioner has never pointed out any such quotation from the Crime Commission Report.

Such plea might be good in a suit by Polizzi but is not a plea of privilege to a suit by Venn, who was not linked

with Polizzi in any Crime Commission reports, nor with McBride in any improper activities.

No Issue As to Actionability Per Se—Foreclosure by Concurrent Finding

The publications in both Counts Two and Four were libelous *per se*, as a matter of law as set out in the opinion of the District Judge (particularly see 201 F. Supp., pages 54-55, pages 10 and 11 hereof).

Even if not libelous *per se* as a matter of law, the publications were ambiguous, and the question would have been a question of fact. *Washington Post Co.* v. *Chaloner*, 250 U.S. 290 (1919); *Peck* v. *Tribune Company*, 214 U.S. 185 (1909).

The Supreme Court will not disturb concurrent findings of the District Court and the Court of Appeals, if there is evidence to support them, at least in the absence of clear error.

> *Anderson* v. *Abbott*, 321 U.S. 349 (1944), r'hg denied 321 U.S. 804; *Goodyear Tire & Rubber Co.* v. *Ray-O-Vac Company*, 321 U.S. 275 (1944); *Williams Manufacturing Company* v. *United Shoe Machinery Corporation*, 316 U.S. 394 (1942).

There was ample evidence to support the concurrent finding that the articles were libelous *per se* (Appellee's Appendix 81b, 85b, in Court of Appeals). Respondent's nationwide Talkathon business (outside his home state) was naturally and foreeseeably destroyed (Appellee's Appendix in Court of Appeals 31b-34b, 41b-42b).

There was no evidence to the contrary.

Not only is there no pleading of privilege as to Counts Two and Four, there is no evidence to support any claim of privilege as to these two counts. The concurrent find-

ings of the lower Courts are supported by all the evidence in all respects.

Some of the Findings of the Trial Judge

The Respondent, Robert G. Venn, received at the hands of the District Judge, a $10,000.00 judgment. The District Judge answers so very well so many of the statements made in the Petition, both as to the background and character of Mr. Venn and what this lawsuit is about, that we quote portions from his opinion. In 201 F. Supp. 47, at page 51, Judge Miller held:

> "At the time of the publication of the articles upon which the suit is predicated, and for a number of years prior thereto, plaintiff Robert G. Venn was engaged in advertising and publicity promotion, principally in radio and television fields. He had occupied positions of responsibility and authority in both radio and television and had acquired a reputation for competency, experience, responsibility, and integrity in radio and television advertising and promotion, and also in the field of management. The defendant is, and was at all times material herein, owner and publisher of the 'Nashville Tennessean', a metropolitan daily newspaper with extensive circulation in other states and in foreign countries.
>
> "Among his other activities, plaintiff had originated, developed and produced a type of television program which had become known to the public as the 'Talkathon', a program on which a political candidate would appear for prolonged periods of time without interruption to receive and answer questions submitted by the public viewers. In the summer of 1954, the defendant, through the Nashville Tennessean, vigorously supported Senator Estes Kefauver in a contest with Congressman Pat Sutton for the Democratic nomination for United States Senator from Tennessee. During the campaign the plaintiff Venn was engaged to

conduct several television 'talkathons' for Congressman Sutton."

In finding false the two publications (Counts Two and Four, pages 6-8 of Petition) Judge Miller stated at pages 55-56:

> "The general rule is that publications that are libelous *per se* are presumed to be false, 33 Am. Jur., Libel and Slander, Sec. 274, a rule which obtains in Tennessee. *Hipson* v. *Pollock*, *supra*, 159 Tenn. at p. 3. But in addition to this legal presumption the entire record in this case affirmatively establishes the falsity and inaccuracy of the statements contained in the articles of July 15 and July 17 with respect to the plaintiff Venn. The clear inference in the July 15 publication that the plaintiff Venn was associated in business with Mickey McBride in carrying on and conducting an interstate gambling wire service which was broken up by the Kefauver committee is conceded to be erroneous. While it is true that the plaintiff was general manager of radio station WMIE in Miami which was owned in part by Mickey McBride, the plaintiff was never connected with McBride in connection with the Continental Press Service which was at one time owned and controlled by McBride, or any other gambling wire service. Also completely false is the statement in the July 15th article that the plaintiff moved in circles with Al Polizzi, 'the Cleveland mobster'. There is evidence in the record that an Al Polizzi was present at the wedding of McBride's son, which was also attended by the plaintiff. But the overwhelming evidence establishes the fact that the plaintiff did not move in circles with Al Polizzi or with mobsters, gangsters or members of the underworld. Also false is the statement in the July 17th article to the effect that the plaintiff was connected with gamblers in Florida. The truth is as shown by the clear preponderance of the evidence that the plaintiff had no connection with gambling interests in that state or elsewhere.

"The plaintiff had enjoyed a successful career in radio and television, having been assistant promotion manager of the National Broadcasting Company at Chicago, sales manager of WRJN at Racine, Wisconsin, and promotion manager of WSGN at Birmingham, Alabama. He was later employed by Storer Broadcasting, operator of a chain of radio and television stations, as promotion and merchandise manager of radio station WAGA at Atlanta, Georgia. Because of his outstanding work at WAGA, he was transferred to Miami on October 1, 1943, to manage the Storer company's radio station WGBS. During his tenure as managing director of WGBS, he formed the Southern Radio and Television Equipment Company, parent organization of Miami's first television station, WTVJ. In 1948, he left the Storer organization to join Lincoln Opening (sic) Company, and he later became general manager of radio station WMIE at Miami. In the early 1950's, he left the employ of WMIE to enter private business. From 1952 to 1954, his efforts were devoted principally to the production of television talkathons, a venture which proved to be profitable. *His excellent reputation for ability, industry and integrity in his profession is shown by the testimony of numerous character witnesses. The record further discloses that in his participation in various publicity and political campaigns, his services were utilized by those persons and organizations opposing gamblers and criminal elements and by political candidates running on platforms calling for rigid law enforcement.*" (Emphasis supplied).

Notwithstanding the fact that Judge Miller found that six of the publications were not libelous *per se*, he did find that a central and untrue theme trying to link Sutton with the underworld via Venn ran through all the articles. He stated:

"It would unduly prolong this opinion to recite the many statements of the various articles, most of which

are *excessively prolix, rambling and discursive, but there can be no doubt that the one point that the articles sought to establish and to impress upon the public was that Sutton was being supported in his efforts to unseat Kefauver by the gangster elements of the country and that his campaign was being fed large amounts of money from the underworld for this purpose.* (Emphasis supplied). With this central theme the articles make repeated references to the investigations of the underworld made by the Senate Crime Committee and headed by Senator Kefauver, to the fact that Kefauver investigated, among others, the Continental Press Service, a national racing wire service, at one time headed by Arthur B. (Mickey) McBride, to the fact that the Continental Press Service was put out of business as a result of such investigations, to McBride's background and activities, to the FCC hearings concerning radio station permits in which McBride was interested and to many other subsidiary facts." (at page 51).

No Witness Introduced by Petitioner

It is to be noted that the Petitioner put on *no witnesses in its defense*, apparently relying only on references to the FCC and Senate Crime Committee reports by way of some sort of justification for its publications. As above noted by the Trial Judge, the series of articles made repeated reference to the said reports and this *identical procedure* is followed by Petitioner from page 10 to page 34 of its 35 page Petition. Actually, the Senate Crime Committee's reports and the records of the FCC were hearsay evidence and were excluded as substantive evidence. The Trial Judge correctly ruled them inadmissible as substantive evidence, for instance, as to the truth of the matters testified to by the witnesses in said hearings or the truth of conclusions therein reached. An order was entered rejecting said exhibits as substantive evidence. (Ap-

pellee's Appendix, 9b, 10b, in Court of Appeals). *The Petitioner has never challenged the ruling of the Trial Judge.* Thus virtually the entire Petition is based on records and reports which have been excluded as substantive evidence. Petitioner's so-called "The Undisputed Testimony" (pages 8-12 of Petition) simply is not proved in the record. In fact, Petitioner never offered any evidence that it had even checked or read said records and reports prior to the preparation of any of the publications. Had it actually done so, it would have been a simple matter to put on evidence to this effect. The fact that it could have put on such evidence and did not do so raises in Tennessee "a strong presumption of law" that the testimony of such uninterrogated witness would not sustain the contention of the party failing to call him. The rule applies with peculiar force to a party to a suit who refuses to testify.

Fisher v. *Insurance Co.*, 124 Tenn. 450, 473-483;

Doughty v. *Grills*, 260 S.W.2d 379, 37 Tenn. App. 63, 90;

I. C. R. R. Co. v. *Rouw & Co.*, 25 Tenn. App. 475, 159 S.W.2d 839, 849;

Tabor v. *Mutual Life Ins. Co.*, (4 C.C.A.) 13 F.2d 765, 770;

Nat. Life & Acci. Ins. Co. v. *Eddings*, 138 Tenn. 512, 522,

and

Dale v. *Temple Co.*, 208 S.W.2d 344, 351, 186 Tenn. 69, holding at page 84, the rule applies as to corporations equally as to individuals.

Counts Two and Four Do Not Relate to FCC or Senate Crime Committee Records or Reports.

It appears that Petitioner is again trying to "throw up a smoke screen", as it tried to do in the Trial Court and Court of Appeals, by devoting two-thirds of its Petition to

the FCC and Senate Crime Committee hearings and reports. The award in this case was based solely on republication by the Petitioner of false and defamatory statements made by Senator Kefauver and one of his supporters, O. D. Bratton. The *entire* publications made the basis of the recovery in Counts Two and Four were in evidence, were argued, and were considered by the Court. There is no basis for any statement by Petitioner (on pages 7 & 8) that the entire publications were not considered. There is no basis for all of the reference to the FCC and Senate Crime Committee Reports, because Counts Two and Four do not involve them. In the publication in Count Two republishing Senator Kefauver's remarks the Petitioner indulged in some punctuation which Judge Miller at page 53 of his opinion in 201 F. Supp. stated, "By use of the two dashes, the defendant parenthesized and isolated the words . . . leaving the remainder of the sentence to refer only to the plaintiff Venn." *This was the action of the newspaper itself in its reporting of the speech.*

No Plea of Guaranty of Free Speech

As to one publication on August 6, 1954, which was not made the basis of a recovery, the Petitioner did plead unqualified privilege "and guaranteed as a constitutional right as freedom of the press" (Par. 29 Appellant's Appendix in Court of Appeals, page 27a). No such plea was even filed as to the publications of July 15, 1954 and July 17, 1954, the publications set out in Counts Two and Four. Respondent submits that such a contention as to Counts Two and Four is a pure after-thought, and is now raised solely to try and inject a constitutional question which Petitioner apparently did *not* feel was involved when it filed its pleas. This it should not be permitted to do.

Publications Are Libelous Per Se, and Damages

As hereinabove noted, Petitioner apparently attempts to state the case should be dismissed because no special damages were found by the Trial Judge. The publications were found to be *libelous per se*. As to this Judge Miller said on pages 54 and 55 of his reported opinion:

> "Words injurious upon their face without the aid of extrinsic proof are defamatory *per se*. *Sweeney* v. *Newspaper Printing Corp.*, 177 Tenn. 196, 147 S.W.2d 406; *Hinson* v. *Pollock*, 159 Tenn. 1, 3, 15 S.W.2d 737; *Wilson* v. *Gadd*, 4 Tenn. App. 582, 586; *Mattson* v. *Albert* 97 Tenn. 232, 234.
>
> "Libels on private persons have been thus classified: (1) Libels which impute to a person the commission of a crime; (2) Libels which have a tendency to injure him in his office, profession, calling, or trade; and (3) Libels which hold him up to public scorn and ridicule *Hinson* v. *Pollock*, *supra*, 159 Tenn. at p. 3. The present case falls in the last two categories.
>
> "Both publications (July 15 and July 17) referred to the plaintiff and his principal activity, the television talkathon. In the field of public relations and publicity, and particularly in the political area, where the spotlight is turned relentlessly not only upon the candidate himself, but also upon the background, reputation and standing of those with whom the candidate is identified, anyone seeking favorable publicity and public support would naturally shun and avoid all contact or association with persons identified or connected with mobsters, underworld characters, gamblers and other nefarious characters. The plaintiff's business activity was that of producing television talkathons for candidates for public office. Statements or imputations that a person so engaged was connected with such elements and characters, when effectively and convincingly presented to the public, would of necessity injure such person's business and occasion him

pecuniary loss. The statements are therefore libelous *per se*. *Smith* v. *Fielden*, 205 Tenn. 313, 320; *Fry* v. *McCord Bros.*, 95 Tenn. 678, 684. *Bank* v. *Bowdre Bros.*, *supra*, 92 Tenn. at p. 736; *Dupont Engineering Co.* v. *Nashville Banner Pub. Co.*, M.D. Tenn., 1925, 13 F.2d 186, 192; *Hartsell* v. *Depew*, 10 Tenn. App. 141, 143; Restatement, Torts, Sec. 573; 33 Am. Jur., Libel and Slander, Sec. 5.

"A person may be defamed by a statement that he associates with persons of notoriously disreputable character or by attributing to him the characteristics of literary or historical figures of ill repute. Restatement, Torts, Sec. 565; *Gearhart* v. *WSAZ, Inc.*, E.D. Ky., 1957, 150 F. Supp. 98, 109, aff'd 254 F.2d 242. The publications here considered would naturally tend to bring the plaintiff into contempt, ridicule and disgrace and thus deprive him of the comforts of society. It is well settled that such publications are *libelous per se*. *Gearhart* v. *WSAZ, Inc.*, *supra*, 150 F. Supp. at p. 109; *Hartsell* v. *Depew*, *supra*, 10 Tenn. App. at p. 143; Restatement, Torts, Sec. 565.

"The general rule is that publications that are libelous *per se* are presumed to be false, 33 Am. Jur., Libel and Slander, Sec. 274, a rule which obtains in Tennessee. *Hinson* v. *Pollock*, *supra*, 159 Tenn. at p. 3. But in addition to this legal presumption the entire record in this case affirmatively establishes the falsity and inaccuracy of the statements contained in the articles of July 15 and July 17 with respect to the plaintiff Venn."

In *Bank* v. *Bowdre*, (1893) 92 Tenn. 723, the Court held at page 726:

"Defamatory words, falsely spoken of a party, which prejudice such party in his profession or trade or business, are actionable in themselves, without proof of special damages."

Other Tennessee cases to the same effect are: *Anderson* v. *Featherly*, (1915 Tenn. C.C.A.) 6 Higgins 94, 99; *Hackey* v. *Metropolitan Life Ins. Co.*, (1943) 26 Tenn. App. 564, 174 S.W.2d 575; *duPont Engineering Co.* v. *Nashville Banner Pub. Co.*, (M.D. Tenn. 1926) 13 F.2d 186, and other cases therein cited.

We again refer to *Peck* v. *Tribune Co.*, *supra*, and the memorable opinion of Mr. Justice Holmes in a case where no special damages were proved. In the Peck case, a nurse, under her own name, endorsed defendant's malt liquor. Through an error, the defendant used plaintiff's picture instead of the picture of the nurse. The defense was that plaintiff could not be damaged since anyone who knew her would know it was the nurse and not she who used and endorsed the liquor. The trial court directed a verdict for defendant. Mr. Justice Holmes reversed, observing that many readers might recognize her face without knowing her name, others think that she had sanctioned the ad under an alias. The lower courts had held for defendant on the ground that there is no general consensus that to drink whiskey or to be a nurse is wrong. Mr. Justice Holmes held the question for the jury, and held the applicable rule to be:

> "If the advertisement obviously would hurt the plaintiff in the estimation of an important and respectable part of the community, liability is not a question of a majority vote.
>
> "We know of no decision in which this matter is discussed upon principle. But obviously an unprivileged falsehood need not entail universal hatred to constitute a cause of action. No falsehood is thought about or even known by all the world. No conduct is hated by all. That it will be known by a large number, and will lead an appreciable fraction of that number to regard the plaintiff with contempt, is enough to

do her practical harm. Thus, if a doctor were represented as advertising, the fact that it would affect his standing with others of his profession might make the representation actionable, although advertising is not reputed dishonest, and even seems to be regarded by many with pride."

214 U.S. at 190; 29 S. Ct. at 556; 53 L. Ed. at 962. See also *Restatement, Torts*, Sec. 559 (e) (19).

The Decisions Cited in the Petition

The Petition at pages 3, 4 and 5 cites decisions of this Honorable Court, which the Petitioner says are in opposition to this present decision or which lay down rules of law which, if applied, call for a dismissal of the suit. At pages 34 and 35 are cited Courts of Appeals decisions which the Petition states (in italics as shown) are "*all directly in point* and are all *contrary* to the decision sought to be reviewed." Nothing could be further from the truth. For this reason we will summarize these cases.

The first case cited is that of *Barr* v. *Mateo et al.*, 360 U.S. 564, 79 S. Ct. 1335. This was a libel suit against the Acting Director of the Office of Rent Stabilization. It was based on a press release by Mr. Barr, made in his official capacity. The question for decision was that of absolute privilege, which is not here involved. The language quoted on page 3 of the Petition does not remotely touch the situation in the present case.

The statement is made at page 4 that this "decision is in direct opposition to this Court's opinion in *Washington Post Co.* v. *Chaloner*, 250 U.S. 290." In that case, the publication was that the plaintiff shot and killed a man in his own home while the man was abusing his own wife who had taken refuge in the home of the plaintiff. The Court held that a mere statement that a man killed another is not

a charge of the commission of a crime, is not *libelous per se*, and the addition of the other words did not make it so. The Court cited with approval an opinion by Judge Lurton, when on the bench of the Sixth Circuit Court of Appeals (in *Commercial Publishing Co.* v. *Smith*, 149 Fed. Rep. 704), where he laid down the rule that where the language complained of is clear and unambiguous, it is the duty of the court to determine whether it is actionable, either *per se* or *per quod*, but where it is ambiguous, of doubtful import, or susceptible of two or more interpretations, its actionability must ordinarily be decided by the jury under appropriate instructions from the court, or by the court as the finder of the facts in the absence of a jury.

The foregoing rule is recognized in the Chaloner case as having been established in the case of *Peck* v. *Tribune Co.*, 214 U.S. 185, 190. We will again mention this Peck case hereinafter.

The Chaloner case is not, as Petitioner states, "in direct opposition" to the decision in this case. In fact, in the Court of Appeals, we cited the Chaloner case (page 30 of Brief in that Court) in support of the rule that a publication must be read and construed in the sense in which the readers to whom it is addressed would ordinarily understand it.

On page 4, Petitioner cites the Tennessee case of *Sweeney* v. *Newspaper Print Corp.*, 177 Tenn. at p. 200, presumably in support of the proposition that since special damages were not found and allowed, this suit should be dismissed. As shown by the quotation, the finding in the Sweeney case is that the language used was not *libelous per se*. In this case at bar, the language used *was* found to be *libelous per se*, in which case it is not necessary to prove special damages to support a recovery.

On page 5, the Petitioner cites three cases which it contends state reasons for the importance of this case and the granting of the writ. The first is the case of *Rice* v. *Sioux City Cemetery*, 349 U.S. 70, 75 S. Ct. 614. It is amazing to the writers hereof that Petitioner would cite this Rice case. We contend that the principle announced in the Rice case is governing here, namely, that to grant the writ sought would be improvident. The Rice case was a suit for damages for mental suffering, claimed to flow from the refusal of the defendant to allow the burial of the Indian husband of the plaintiff in its cemetery. A writ of certiorari was granted. A petition to rehear was thereafter granted and this court dismissed the writ saying it had been improvidently granted. The Court said the Rice case was not one in which there are "special and important reasons" as required by Rule 19 (page 74 of opinion). This Court also said on page 74: "Nor does it (this Court) sit for the benefit of the particular litigants." This Court further stated (p. 79) that it should "be consistent in not granting a writ of certiorari except in cases involving principles, the settlement of which is important to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion between the circuit courts of appeal." Respondent submits that these governing rules dictate the denial of the present writ sought.

The next case is *In re Murchison et al.*, 349 U.S. 133, 75 S. Ct. 623, and involved a judge sitting as a "one-man jury" and who also heard the case arising from his inquiry and holding the Petitioners in contempt of court. The issue involved was one of due process and "a fair trial in a fair tribunal" (at page 136). The Petitioner in this case has not claimed any violation of the due process clause or that it did not get "a fair trial in a fair tribunal." The

citation of the Murchison case in support of this present Petition is meaningless.

The Petitioner then cites *Williams* v. *Georgia*, 349 U.S. 375, 75 S. Ct. 814, and it involved racial discrimination in the selection of the jury. In oral argument, the Attorney General of Georgia admitted a denial of equal protection, but said the question had been raised too late. The case was remanded to the State Supreme Court for reconsideration. The facts and the opinion have no application to the case here involved. The quotation on page 5 of the petition is actually from *Patterson* v. *Alabama*, 294 U.S. 600, which this Court said involved "identical substantive facts" (at page 389).

Not one of the cited cases states reasons for the granting of the writ sought. On the contrary, sound reasons are stated for denying the writ.

At page 34 of the Petition, there are cited three "recent decisions of various federal Courts, *all directly in point*, and all *contrary* to the decision sought to be reviewed." The only correct thing stated is that the decisions are actually recent decisions. The first case cited is that of *Wallingford* v. *Zenith Radio Corp.*, (7th Cir.) 310 F.2d 693. In this case, the judgment for the defendant was affirmed. The complaint of the plaintiff charged that the defendant was a field representative of a post graduate medical education department at the University and was a vendor of hearing aids. The court held that this wording was not *libelous per se*. Neither the facts nor the opinion have any bearing on the present case.

The second case cited is that of *Hogan* v. *New York Times Co.*, (2nd Cir.) 313 F.2d 354. This is a libel action for a publication of a defamatory article concerning the actions of the plaintiffs, who were policemen, in the making

of a raid on a dice game. The headline in the article described the raid as following "The Script of a Keystone Comedy." A jury verdict of over $6,000 was returned for both plaintiffs and the Second Circuit Court of Appeals *affirmed*, holding the defense of qualified privilege was properly for the jury. Also, the court said at page 356:

> "But in addition, we hold that the plaintiffs were entitled to go to the jury on the issue of reckless disregard of the truth."

This last quote is particularly applicable to the case involved. In fact, this Hogan case is direct authority to deny this Petition rather than grant it.

The third case cited, which Petitioner says is directly in point, and contrary to the decision sought to be here reviewed, is that of *Brownfield* v. *Landon*, (D.C.) 307 F.2d 389 (Cert. Den.). This suit was for damages because of an alleged slanderous statement made by an Air Force Inspector General at a meeting. His statements were germane to the purpose of the meeting. The court held that his statements were absolutely privileged and judgment was rendered for the defendant. There is no question of absolute privilege involved in the case at bar.

The foregoing decisions of this Honorable Court and of the three circuit courts of appeal are those relied upon by the Petitioner. The cases simply do not hold what the Petitioner states they hold, they are no authority for the granting of this petition, and, in fact, some of the cases are direct authority for the denial of it.

CONCLUSION

As pointed out hereinabove, Judge Miller, for example, found: as "false . . . the statement . . . that plaintiff was

connected with gamblers in Florida"; "that the plaintiff did not move in circles with Al Polizzi or with mobsters, gangs or members of the underworld"; and that the plaintiff was not a "tie in" with the underworld. These questions are not properly open to review in this Honorable Court. Yet, it seems the Petitioner now desires this Court so to do solely *because* it, by the so-called "The Undisputed Testimony", seeks to establish that Venn was associated with gamblers and gangsters, that he was "freely mingling, with a smiling countenance, with such underworld characters and gangsters as 'Mickey' McBride, 'Big Al' Polizzi, etc.", and that Venn was otherwise an unsavory character and a "tie in" with the underworld. Petitioner seeks to relitigate here matters not now open to review. These matters, *all decided adversely to Petitioner*, present no constitutional questions "relating to the freedom of the press, as protected by the Constitution of the United States, and Petitioner's right to publish, without malice, *political news* arising out of issues involved in a contest for the Democratic nomination to the United States Senate . . .".

The case has been correctly decided and the writ should be denied.

Respectfully submitted,

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